

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

10	DAVID E. THOMPSON, SR.,)	Case No. C08-705-RSM-JPD
11	Plaintiff,)	
12	v.)	
13	SKAGIT COUNTY PUBLIC DEFENDERS,)	REPORT AND RECOMMENDATION
14	Defendants.)	
15	_____)	

16 Plaintiff David E. Thompson, Sr. has filed an application to proceed *in forma pauperis*
17 (“IFP”) in this proposed civil rights lawsuit against defendants Skagit County Public
18 Defenders. Dkt. No. 1. Plaintiff alleges that the defendant did not “protect plaintiff’s rights or
19 give proper representation in court.” Dkt. No. 1 at 2. As a result, he argues, Plaintiff suffered
20 a deprivation of justice, cruel and inhumane treatment, physical and deprivation of
21 constitutional rights. *Id.* He also alleges that defendant’s actions subjected him to further
22 deprivation of rights under the American with Disabilities Act “because of prejudice against
23 cripples in their county.” *Id.* Plaintiff seeks monetary compensation and restoration of his
24 rights. *Id.* After careful consideration of plaintiff’s IFP application, proposed complaint, the
25 governing law and the balance of the record, the Court ORDERS as follows:

26 Pursuant to 28 U.S.C. § 1915(e)(2)(B), this Court may deny an application to proceed

01 IFP and should dismiss a complaint if it is frivolous or fails to state a claim upon which relief
02 can be granted. *See* 28 U.S.C. § 1915(e)(2)(B)(i)-(ii); *O’Loughlin v. Doe*, 920 F.2d 614, 616
03 (9th Cir. 1990).

04 Here, plaintiff fails to plead a sufficient 42 U.S.C. § 1983 complaint, and as such fails
05 to state a complaint upon which relief may be granted. Section 1983 requires that the violation
06 of rights alleged be “proximately caused by conduct of a person acting under color of state
07 law.” *Crumpton v Gates*, 947 F.2d 1418, 1420 (9th Cir. 1991). Though plaintiff alleges that
08 the defendant has violated his constitutional rights, the Skagit County Public Defenders is not a
09 “person acting under color of state law” for purposes of a § 1983 complaint. “[A] public
10 defender does not qualify as a state actor when engaged in his general representation of a
11 criminal defendant.” *Georgia v. McCollum*, 505 U.S. 42, 53 (1992). If the plaintiff believes
12 the defendant has committed malpractice in his representation, he may sue him under those
13 grounds but not under § 1983.

14 Furthermore, any attempts to cure the extreme deficiencies in this case would be futile.
15 Because this action fails to state a claim upon which relief can be granted, it is subject to
16 dismissal under 28 U.S.C. § 1915(e)(2)(B) and Federal Rule of Civil Procedure 12(b)(6). The
17 fact that plaintiff is not a prisoner does not change this conclusion. *See Lopez v. Smit*, 203
18 F.3d 1122, 1129 (9th Cir. 2000) (“[S]ection 1915(e) applies to all in forma pauperis
19 complaints, not just those filed by prisoners.”).

20 The Court advises plaintiff of his responsibility to research the facts and law before
21 filing a complaint in order to determine whether his claim for relief is frivolous. If Plaintiff files
22 a frivolous action, he may be sanctioned. *See* Fed. R. Civ. P. 11. The Court would likely
23 impose a sanction of dismissal on any frivolous complaint. If plaintiff files numerous frivolous
24 or malicious complaints, the Court may bar him from proceeding in this court. *See DeLong v.*
25 *Hennessey*, 912 F.2d 1144, 1146-48 (9th Cir. 1990) (discussing bar order requirements).

26 Because of the deficiencies in plaintiff’s complaint, his request to proceed IFP should

01 be DENIED and this case DISMISSED without prejudice. 28 U.S.C. § 1915(e)(2)(B). A
02 proposed Order of Dismissal accompanies this Report and Recommendation. If plaintiff
03 believes that the deficiencies outlined herein can be cured by an amendment to his complaint,
04 he should lodge an amended complaint as a part of his objections, if any, to this Report and
05 Recommendation.

06 DATED this 2nd day of June, 2008.

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08 JAMES P. DONOHUE
09 United States Magistrate Judge
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